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Subject: OCSPP News for January 12, 2021

OCSPP News Round-Up

Special News on PFAS

- Bloomberg Law 01/12; Industries Must Track Three More PFAS This Year, EPA List Says
- Bloomberg Law 01/12; 3M, Wolverine World Wide Seek Dismissal of Michigan PFAS Claims
- E&E News 01/12; Video campaign presses Biden to ban PFAS
- National Law Review 01/12; PFAS Product Liability Cases – Are the Floodgates Now Open?

Toxics

- Bloomberg Law 01/11; 'Forever Chemicals' Found in China's Drinking Water Sources
- Bloomberg Law 01/12; Releases of Hazardous Chemicals Drop Nationwide, EPA Reports
- EHS Daily Advisor 01/12; EPA Releases Final Risk Evaluation for 1,4-Dioxane
- Lexology 01/11; Biden Administration Poised to Implement TSCA Requirements

Pesticides

- The Guardian 01/10; 'There's a red flag here': how an ethanol plant is dangerously polluting a US village

Blog/OpEd/Other

- Bergeson & Campbell Blogs 01/12; Comments on Proposed Changes to TSCA Fees Rule Due February 25
- Beyond Pesticides 01/12; New York State Bans Glyphosate/Roundup on State Land, While Advocates Push for Organic Land Management

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Industries Must Track Three More PFAS This Year, EPA List Says
Pat Rizzuto, Bloomberg Law
https://news.bloomberglaw.com/environment-and-energy/industries-must-track-three-more-pfas-this-year-epa-list-says?context=search&index=0

The EPA has expanded the number of PFAS that companies and federal facilities will have to track this year for a report on their environmental releases in 2022.

The Environmental Protection Agency revised its list of per- and polyfluoroalkyl substances, or PFAS, that an estimated 500 industrial and federal facilities must report under the Toxics Release Inventory, commonly called the TRI.

The list, updated Jan. 8, doesn't identify the new information. But a Bloomberg Law analysis showed the updated list identifies three PFAS—silver(I) perfluorooctanoate, perfluorooctyl iodide, and potassium perfluorooctanoate—that will join the 172 PFAS already on the agency's list for routine tracking.

The EPA didn't immediately respond to a request for comment Tuesday.

July 1 Deadline
Industries and federal facilities that released 100 or more pounds of the previously listed 172 PFAS or other TRI-reportable chemicals to the air or water, dispose of them, or manage them through recycling, energy recovery or treatment in calendar year 2020 must report the quantities released by July 1.

Chemical releases amounting to less than 100 pounds, may have to be reported if the waste contains 0.1% or more of one of the most well-known PFAS, called perfluorooctanoic acid (PFOA), or 1% or more of the other listed PFAS, according to the EPA.

Congress required the EPA to make industrial and federal facilities report their environmental releases of certain previously regulated PFAS through a provision in the National Defense Authorization Act for Fiscal Year 2020. When the EPA released last year the list of 172 PFAS, it said it would add new PFAS down the road.

Silver(I) perfluorooctanoate is identified on business documents as Chemical Abstracts Service (CAS) No. 335-93-3. Perfluorooctyl iodide is listed as CAS No. 507-63-1, while potassium perfluorooctanoate, is listed as CAS No. 2395-00-8.

3M, Wolverine World Wide Seek Dismissal of Michigan PFAS Claims
Sylvia Carignan, Bloomberg Law
https://news.bloomberglaw.com/environment-and-energy/3m-wolverine-world-wide-seek-dismissal-of-michigan-pfas-claims?context=search&index=0

3M Co. and Wolverine World Wide Inc. asked a federal district court to dismiss Michigan residents' efforts to seek medical monitoring and monetary damages for PFAS exposure and environmental contamination.

Though Wolverine used 3M's Scotchgard in its weatherproof shoes, 3M doesn't have any relationship to the residents who brought the case, the company told the U.S. District Court for the Western District of Michigan in a memo filed Monday.

The request for medical monitoring contradicts a precedent set by the state's supreme court, and the contamination is being addressed by state authorities, Wolverine said in its Monday memo.

Wolverine began using Scotchgard at its Rockford, Mich., tannery in 1958, according to the residents' complaint. The 3M product formerly contained PFAS, or per- and polyfluoroalkyl substances, which persist in the environment.

The 11 residents seek monetary damages to compensate for decreased property values and the additional cost of obtaining potable water, in addition to funding remediation of their contaminated properties so that they are PFAS-free. They also asked the court to require the companies to start a medical monitoring program to diagnose and treat the cancers and other health effects caused by PFAS exposure.

Though the state's investigation is ongoing, hundreds of homes in Kent County, Mich., have wells contaminated with PFAS or are within a zone of probable contamination, the residents' complaint said.

In a similar case, the Michigan Supreme Court decided in 2005 that residents seeking medical monitoring for dioxin contamination couldn't do so based on exposure alone, Wolverine said in its memo.

The company sought dismissal of the residents' nuisance claims because the Michigan Department of Environment, Great Lakes, and Energy had already addressed public nuisance through its litigation against the two companies.

Wolverine and 3M resolved a legal dispute over who should pay to clean up the chemicals near the Rockford tannery through a consent decree in 2020. 3M agreed to pay Wolverine $55 million to support Wolverine's PFAS remediation efforts.

PFAS have been used to manufacture nonstick and stain-resistant coatings in clothing, fast-food wrappers, carpets, and other consumer and industrial products.

The chemicals may cause adverse health effects, including developmental harm to fetuses, testicular and kidney cancer, liver tissue damage, immune system or thyroid effects, and changes in cholesterol, according to the Environmental Protection Agency.

The Miller Law Firm PC, Weitz & Luxenberg PC, Robbins Geller Rudman & Dowd LLP, and Motley Rice LLC represent the residents.

Warner Norcross & Judd LLP and Arnold & Porter Kaye Scholer LLP represent Wolverine. Miller Canfield Paddock & Stone PLC and Mayer Brown LLP represent 3M.

The case is Zimmerman v. 3M Co., W.D. Mich., No. 1:17-cv-01062, 1/11/21.

Video campaign presses Biden to ban PFAS
E.A. Crunden, E&E News
https://www.eenews.net/greenwire/2021/01/12/stories/1063722339

A national coalition of community groups has a video campaign through Inauguration Day calling on President-elect Joe Biden to take immediate action on "forever chemicals."

The group plans to release at least one video daily through Jan. 20. In an initial video released yesterday, the National PFAS Contamination Coalition (NPCC) addressed Biden and asked for him to prioritize cracking down on per- and polyfluoroalkyl substances, or PFAS.

The video, which spans a minute and 13 seconds, details the health impacts associated with some PFAS, including cancer, kidney disease and reproductive issues. Several members of the coalition speak during the video, blasting "years of inaction by the federal government" and calling on Biden to "ban all PFAS chemicals at once," pass national drinking water standards, and "hold polluters accountable for cleaning up their mess."

In a set of accompanying statements, advocates made personal appeals to Biden. Among those are comments by Hope Grosse of the BuxMont Coalition for Safer Water in Warminster, Pa., who spoke about her stage 4 cancer diagnosis after years of PFAS exposure, and Jay Post, an advocate for PFAS-free firefighting gear whose vocal cords have been removed due to cancer.

"My daughter passed away in 2007," said Linda Shosie of Mothers Safe Air Safe Water Force in Tucson, Ariz. "I've seen children as young as 5 years old [die] of brain cancer, including my niece. I have lived through the devastation of this pollution in my community."

The coalition highlighted a 22-point action plan published last month that emphasizes "priority asks" of the new administration. Those include placing a moratorium on all new PFAS approvals, for EPA to regulate PFAS as a class, and a number of other points including a ban on PFAS incineration and disposal "until safe disposal methods are found."

NPCC lists no contact information, but the coalition consists of more than 20 community groups active on PFAS issues. One is the PFAS Action Group, based in Nantucket, Mass.; a member of that group, Jaime Honkawa, said NPCC intends to run more videos.

"We will be releasing at least one video a day now through Inauguration Day highlighting stories of people/communities poisoned by PFAS contamination from across the country," Honkawa confirmed via email.

While the Trump administration has touted its work on PFAS, activists have been critical and accused the White House of dragging out regulations. That scrutiny mounted this week, as documents reviewed by The Hill show that the White House intervened to weaken EPA guidance on imports of products containing PFAS.

The Biden transition team did not respond to a request for comment on the initial video and NPCC's broader requests of the president-elect. Biden has previously indicated he will take a strict approach to the chemicals, highlighting PFAS as an environmental justice issue and pledging to regulate them through drinking water standards and other means (Greenwire, Nov. 10, 2020).

While the first video's emphasis favors regulatory actions that would be taken by EPA, like setting a maximum contaminant level in drinking water or designating PFAS as hazardous substances under federal Superfund law, Honkawa noted that some moves could come through legislation, as well.

"Regardless of the process, we need strong leadership to protect our communities from these toxic chemicals," Honkawa said.

PFAS Product Liability Cases – Are the Floodgates Now Open?
John Gardella, National Law Review
https://www.natlawreview.com/article/pfas-product-liability-cases-are-floodgates-now-open

For the past three years, we have put forth the prediction that the PFAS litigation would evolve by expanding beyond lawsuits against PFAS manufacturers for personal injuries to lawsuits against manufacturing companies that utilize PFAS as a component of their products. This "next wave" of PFAS product liability cases would significantly impact business interests at an incredible financial magnitude and puts at risk corporate finances at levels that could cause significant business interruption. A signal that this "next wave" of products liability litigation may be here came late last week with the announcement that a product manufacturer settled a group of pending PFAS lawsuits – some of the damages going to environmental cleanup, but some of the damages going towards settlement with individuals for personal injury. This is an extremely significant PFAS development that deserves closer attention.

What Are PFAS and Why Are They a Concern?

Per- and poly-fluoroalkyl substances ("PFAS") are a class of over 7,000 manmade compounds. Chemists at 3M and Dupont developed the initial PFAS chemicals by accident in the 1930s when researching carbon-based chemical reactions. During one such experiment, an unusual coating remained in the testing chamber, which upon further testing was completely resistant to any methods designed to break apart the atoms within the chemical. The material also had the incredible ability to repel oil and water. Dupont later called this substance PFOA (perfluorooctanoic acid), the first PFAS ever invented. After World War II, Dupont commercialized PFOA into the revolutionary product that the company branded "Teflon."

Only a short while later, 3M invented its own PFAS chemical – perfluorooctane sulfonate (PFOS), which they also commercialized and branded "Scotchgard." Within a short period of time, various PFAS chemicals were used in hundreds of products – today, it numbers in the thousands.

The same physical characteristics that make PFAS useful in a plethora of commercial applications, though, also make them highly persistent and mobile in the environment and the human body – hence the nickname, "forever chemicals." While the science is still developing regarding the extent of possible effects on human health, initial research has shown that PFOA and PFOS are capable of causing certain types of cancer, liver and kidney issues, immunological problems, and reproductive and developmental harm.

PFAS Litigation Landscape To Date

Thus far, the PFAS litigation has centered on lawsuits filed against PFAS manufacturers (primarily, Dupont and 3M) for environmental cleanup and remediation, with some lawsuits against these companies for personal injury claims. The settlements and damages awarded in these cases have been eye-opening to many, but few have considered that similar damages could ever be awarded to downstream companies that simply use PFAS in their products.

In 2010, Minnesota brought the first PFAS pollution claim against 3M for negligently discharging PFAS used in the manufacture of Scotchgard into sources of drinking water. The lawsuit resolved in 2018 for $850 million, which the state used to fund drinking water and water sustainability projects in the areas affected by contamination. Several states have since followed suit, including Michigan, whose Attorney General sued 17 companies that manufactured PFAS in January 2020 alleging causes of action under the Natural Resources and Environmental Protection Act, the Michigan Fraudulent Transfer Act, and Michigan's laws of negligence, trespass, public nuisance, and unjust enrichment. This case will likely take years to resolve, but will shape the future of PFAS litigation, especially since the lawsuit involves a much broader list of defendants than the Minnesota case. The below chart shows the amounts of reported environmental pollution cases related to PFAS:

Year of Settlement	Amount	State
2018	$850 million	MN
2018	$4 million	AL
2019	$2.7 million	MN
2019	$35 million	AL
2020	$55 million	MI
2020	$113 million	MI

On the personal injury front, the most well-known personal injury PFAS lawsuit (featured in the blockbuster film Dark Waters) was brought by Attorney Rob Bilott against DuPont on behalf of citizens in Parkersburg, West Virginia. Ultimately, the case settled for $670 million in 2017. What is most notable about the lawsuit, however, is the precedent it set when the court permitted (and the parties agreed to) the convening of a three person independent science panel (the so-called C8 Science Panel, C8 being another name for PFOA) to investigate the potential links between PFOA exposure and the effects on human health.

The C8 science panel concluded that there were probable links between PFOA exposure and the development of kidney and testicular cancer, ulcerative colitis, thyroid disease, pregnancy-induced hypertension, and high cholesterol. The science panel and resulting medical monitoring agreement for the 70,000 citizens that participated in the lawsuit cost DuPont over $100 million in this case.

Shortly after the C8 science panel findings, Attorney Bilott and Dupont began litigating each person's case one by one in West Virginia. Three cases went to verdict, each resulting in a plaintiffs' verdict: (1) $1.6 million compensatory reward for a kidney cancer plaintiff; (2) $5.1 million compensatory and $500,000 punitive award to a testicular cancer plaintiff; and (3) $2.1 million compensatory and $10.5 million punitive reward for a testicular cancer plaintiff. It was shortly after the third verdict that Dupont settled all of the pending claims in the class action for the $670 million sum. Since then, two other cases went to verdict against Dupont in Ohio – one was a hung jury and will be retried, the second resulted in a $50 million award to a testicular cancer plaintiff.

In addition, a Multi District Litigation (MDL) was set up in South Carolina for claims of environmental pollution and personal injury related to aqueous film forming foam (AFFF). While the MDL does involve both Dupont and 3M, it also involves several manufacturers of AFFF that used PFAS as a component of their AFFF. It is from this docket that a recent settlement may signal the beginning of the next wave of PFAS personal injury lawsuits.

The Johnson Controls Settlement

For several years, the AFFF MDL has steadily moved along through various phases of discovery, yet no settlements were agreed to among parties until late last week for one group of plaintiffs that alleged that AFFF had contaminated their drinking water. The manufacturer of the AFFF, Tyco Fire Products, is a subsidiary of Johnson Controls. The company agreed to pay $17.5 million to settle the claims brought by approximately 300 home owners. $15 million of the proposed settlement (it still needs to be approved by the court) is allocated for property damage claims (i.e. – environmental cleanup); however, $2.5 million will go to a small subset of plaintiffs that also alleged personal injury, including kidney and testicular cancer.

While this resolves only a small group of the pending PFAS cases on the AFFF MDL, the settlement is not only significant because it is the first settlement arising out of the MDL, but also because it is the first time that a settlement has taken place for a PFAS personal injury lawsuit with a company that used PFAS as a component of its consumer product. The targeting of the AFFF product should not surprise anyone, as it is a product that, by its nature, has the potential for the highest dose of exposure to individuals. However, the settlement shows that companies are sufficiently concerned about PFAS product liability lawsuits that they are willing to resolve the cases without going to trial. This will embolden plaintiffs' attorneys, who will seek other non-PFAS manufacturing companies to target for PFAS product liability lawsuits.

While this may seem farfetched, one need only look to the evolution of the asbestos litigation to see that plaintiffs' attorneys will seek to hold liable an ever-expanding pool of manufacturing companies in tort cases that involve chemicals or substances that are ubiquitous and alleged to be harmful to human health.

Conclusion

Companies that manufacture products and that utilize PFAS in some aspect of the manufacturing process or the end product must heed the news of the AFF settlement and properly plan now to avoid significant and costly PFAS product liability lawsuits that we predict will come. Full compliance audits are a crucial first step in the process, with consideration for finding non-PFAS substitutes as an option. Even companies without direct use or knowledge of PFAS use in products should consider a review of supplier materials, as those materials may have PFAS as a component, which could some day subject the company to legal liability issues

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'Forever Chemicals' Found in China's Drinking Water Sources

Michael Standaert, Bloomberg Law
https://news.bloomberglaw.com/environment-and-energy/forever-chemicals-found-in-chinas-drinking-water-sources?usertype=External&bwid=00000176-f070-d6ad-a176-f875eaab0000&qid=7040734&cti=FGOV&uc=1320000080&et=NEWSLETTER&emc=neve_nl%3A36&source=newsletter&item=headline&region=digest&access-ticket=eyJjdHh0IjoiTkVWRSIsImlkIjoiMDAwMDAxNzYtZjA3MC1kNmFkLWExNzYtZjg3NWVhYWIwMDAwIiwic2lnIjoiemNTOG1TR0lTOWJsMEprQzh1M0xWY2Nab0VrPSIsInRpbWUiOiIxNjEwNDUzNTk1IiwidXVpZCI6IlVHQmZTUldwZzRMU2xtT1FZbnZEQVE9PXEzbHAwQVFsUHAreEZqQ0crQm41cnc9PSIsInYiOiIxIn0%3D

China's lack of control over industries that produce a toxic family of chemicals known as PFAS is leading to high levels of contamination in drinking water sources, scientists in Beijing say.

A study by researchers in Tsinghua University, published Monday, looked at 30 research studies on per- and polyfluoroalkyl substances (PFAS) in drinking water in China. The dataset covered 66 cities and around 450 million people.

PFAS levels in several locations in China were more than seven times higher than levels that trigger health advisories by the U.S. Environmental Protection Agency. The highest PFAS concentration was found in Zigong, in the Sichuan province, with a level of 502.9 nanograms per liter; EPA recommends advisories at levels exceeding 70 nanograms per liter.

The findings highlight the need for Chinese authorities to regulate and monitor PFAS, scientists say. Some PFAS have been linked to testicular and kidney cancer, immune suppression, as well as thyroid and fertility disorders, and have led to multimillion dollar lawsuits in the U.S. and expensive remediation campaigns.

"Currently in China, because PFAS have not been included in any regulation, we basically have no control on emissions or [policies] on remediation," Huang Jun, lead author of the report, told Bloomberg Law in an interview.

While China has extensive water quality monitoring systems, there's no standard for monitoring PFAS, so monitoring data is limited, Huang said.

'Better Alternatives' Needed

The highest level of contamination was found in regions with intensive industrial activity and the production of fluoropolymer (PTFE), primarily along the Yangtze River basin, China's longest and most important river where much of the country's chemical production occurs.

Two locations in the Jiangsu province had PFAS levels of 332.6 ng/l and 122.4 ng/l, while a location in the Sichuan province had PFAS levels at 119.4 ng/l, according to the study, which appeared in the journal Environmental Sciences Europe.

PFAS such as perfluorooctanoic acid (PFOA) and perfluorooctanesulfonic acid (PFOS) have been in the process of being phased out in Europe and North America for nearly two decades. But China still produces the substances, potentially contaminating groundwater and surface water resources.

"The findings are significant, though I'm not surprised that PFAS contamination is serious in China given that even PFOA and PFOS are still being produced," Guo Bo, an assistant professor of the Department of Hydrology and Atmospheric Sciences at the University of Arizona who extensively studies PFAS, said in an email.

The dearth of regulatory action in China has meant little public awareness of the issue, either at the corporate level or by citizens who may be drinking PFAS-contaminated water.

"We need this kind of work to convince industry to look to better alternatives," Roland Weber, another author of the report said on the call with Huang, said of the report.

Weber called for some type of government regulation, noting that health, remediation, and compensation costs of doing nothing would be great. Industry also should understand that "the external costs are huge, and that they might have to compensate for some of these costs," he said.

Releases of Hazardous Chemicals Drop Nationwide, EPA Reports
Pat Rizzuto, Bloomberg Law
https://news.bloomberglaw.com/environment-and-energy/releases-of-hazardous-chemicals-drop-nationwide-epa-reports?context=search&index=2

Nationwide releases of designated, hazardous chemicals decreased by 9% between 2018 and 2019, illustrating the continued effectiveness of a decades-old chemical "right-to-know" program, according to new data the EPA published Tuesday.

The Environmental Protection Agency released its analysis of 2019 Toxics Release Inventory, or TRI, that data industries and federal facilities reported last year.

Total on- and off-site chemical releases dropped from 3.7 billion pounds to 3.4 billion pounds, a decrease of 9%, the agency said in its analysis.
However, off-site disposal and other releases increased from 418 million to 432 million pounds, and on-site water releases increased from 195 million to 201 million pounds.
The TRI program began in 1986 as an effort to inform communities about nearby hazardous chemicals. It requires industrial and federal facilities to report the amounts of designated chemicals that they release into the air or water, dispose of, or manage through recycling, energy recovery or treatment.

EPA Releases Final Risk Evaluation for 1,4-Dioxane
Lisa Whitley Colema, EHS Daily Advisor
https://ehsdailyadvisor.blr.com/2021/01/epa-releases-final-risk-evaluation-for-14-dioxane/

In December, the EPA released its final risk evaluation for 1,4-dioxane, a chemical "currently used as a solvent in a variety of commercial and industrial applications such as in the manufacture of other chemicals, a processing aid, functional fluid, a laboratory chemical, in adhesives and sealants, in spray polyurethane foam, in printing inks, and as a dry film lubricant," according to the EPA. It is also commonly found as a contaminant in detergents and soaps.

The EPA's findings, under the Toxic Substances Control Act (TSCA), concluded there are no unreasonable risks to workers, consumers, bystanders, the general population, or environment in the uses it analyzed.

"Information from the 2016 Chemical Data Reporting (CDR) for 1,4-dioxane indicates reported production volume in more than 1.1 million lbs/year (manufacture and import)," according to the EPA.

In evaluating the chemical, the EPA reviewed 24 conditions of use utilizing the review of "extensive scientific literature, conducted modeling and other risk assessment activities, and collected toxicity, exposure, and hazard information from many sources," the EPA says.

Because it is considered a "forever" chemical, 1,4-dioxane doesn't easily decay naturally in the environment, according to Chemical & Engineering News (CEN). "In toxicity studies, laboratory rodents given 1,4-dioxane in their drinking water developed liver cancer," reports CEN. "The US National Toxicology Program classifies the synthetic compound as 'reasonably anticipated to be a human carcinogen.'"

The chemical is one of the most common contaminants found in drinking water, according to Thomas K. G. Mohr, author of a technical book about investigating and remediating 1,4-dioxane pollution, as reported by CEN.

"Water monitoring data collected in 2010–15 show that more than 7 million people in the US across 27 states had utility-supplied tap water that had detectable 1,4-dioxane, according to the Environmental Working Group (EWG), an advocacy organization," as reported by CEN.

Because it dissolves completely in water, it is extremely challenging to remove.

"During the course of the risk evaluation process for 1,4-dioxane, OPPT [Office of Pollution Prevention and Toxins] worked closely with the offices within EPA that administer and implement regulatory programs under the Clean Air Act (CAA), the Safe Drinking Water Act (SDWA), the Clean Water Act (CWA), the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), and the Resource Conservation and Recovery Act (RCRA)," according to the EPA's final risk evaluation. "Through this intra-agency coordinate, EPA determined that 1,4-dioxane exposures to the general population via drinking water, ambient air and sediment pathways fall under the jurisdiction of other environmental statutes administered by EPA, i.e., CAA, SDWA, CERCLA, and RCRA. As explained in more detail in section 1.4.2, EPA believes it is both reasonable and prudent to tailor TSCA risk evaluations when other EPA offices have expertise and experience to address specific environmental media, rather than attempt to evaluate and regulate potential exposures and risks from those media under TSCA."

Next steps for the Agency regarding 1,4-dioxane are to address any unreasonable risks identified and to propose risk management actions and accept public comments on any proposed actions. The EPA has a 1-year deadline to propose any recommended actions.

Biden Administration Poised to Implement TSCA Requirements
Manko Gold Katcher & Fox, Lexology
https://www.lexology.com/library/detail.aspx?g=3bcd0280-0ace-47f5-9a50-60adc9155e7d

First, the incoming Biden administration will be charged with implementing key components of the 2016 TSCA amendments and could use that authority to expand EPA's view as to whether an existing chemical presents an unreasonable risk of injury to health or the environment. As of the date of this publication, EPA had completed seven of the risk evaluations for the "first ten" high priority substances and has indicated that two more will be completed before Inauguration Day. The Biden administration may look for opportunities to reopen one more of these risk evaluations and employ a revised approach (such as looking at other uses, exposure routes, and sensitive subpopulations) which could alter the initial conclusions.

For example, in July, a coalition of environmental groups and unions filed a petition in the 9th Circuit Court of Appeals challenging EPA's final risk evaluation for methylene chloride. The Biden administration could use this petition as a vehicle to revisit that risk evaluation. Similarly, in September EPA issued final scopes of risk evaluations for the "next twenty" high priority substances. The Biden administration could reexamine these scopes and ultimately approach the risk evaluation process for these chemical substances in a fundamentally different way that increases the likelihood of finding uses that present unreasonable risks.

The Biden administration will also have the opportunity to influence the outcome of several other pending, planned or court-directed TSCA actions in 2021. First, EPA recently released a new proposed TSCA fee rule, which will govern the fees manufacturers, importers, and certain processors a required to pay to fund EPA's costs to implement TSCA. The proposed rule includes new exemptions for certain manufacturers and importers that are analogous to the current Chemical Data Rule (CDR) exemptions.

EPA is also scheduled to address a number of other TSCA rules in the near future, including:

(1) a rule governing a one-time reporting event of per- and polyfluoroalkyl substances (PFAS) manufactured or imported after January 1, 2011;

(2) a rule revising the process by which EPA reviews and makes determinations on premanufacture notices for new chemicals; and

(3) new rules on submitting and supporting confidential business information claims.

Finally, at the very end of 2020, a federal court in the Northern District of California ordered EPA to revise the CDR with respect to asbestos, and "address" certain exemptions, exclusions and the reporting threshold. This and the noted rulemakings will afford a full TSCA plate for the new EPA Administrator.

'There's a red flag here': how an ethanol plant is dangerously polluting a US village

Carey Gillam, The Guardian

https://www.theguardian.com/us-news/2021/jan/10/mead-nebraska-ethanol-plant-pollution-danger

For the residents of Mead, Nebraska, the first sign of something amiss was the stench, the smell of something rotting. People reported eye and throat irritation and nosebleeds. Then colonies of bees started dying, birds and butterflies appeared disoriented and pet dogs grew ill, staggering about with dilated pupils.

There is no mystery as to the cause of the concerns in Mead, a farming community so small that its 500 residents refer to it as a village and not a town.

After multiple complaints to state and federal officials and an inquiry by a researcher from the University of Nebraska, all evidence points to what should be an unlikely culprit – an ethanol plant that, like many others around the United States, turns corn into biofuel.

The company, called AltEn, is supposed to be helpful to the environment, using high-starch grains such as corn to annually churn out about 25m gallons of ethanol, a practice regulators generally hail as an environmentally friendly source for auto fuel. Ethanol plants typically also produce a byproduct called distillers grains to sell as nutritious livestock feed.

But unlike most of the other 203 US ethanol plants, AltEn has been using seed coated with fungicides and insecticides, including those known as neonicotinoids, or "neonics", in its production process.

Company officials have advertised AltEn as a "recycling" location where agricultural companies can rid themselves of excess supplies of pesticide-treated seeds, a strategy that gave AltEn free supplies for its ethanol, but also left it with a waste product too pesticide-laden to feed to animals.

Instead, AltEn has been accumulating thousands of pounds of a smelly, lime-green mash of fermented grains, distributing some to farm fields as a "soil conditioner" and accumulating the rest on the grounds of its plant.

It is that waste that some researchers say is dangerously polluting water and soil and probably also posing a health threat to animals and people. They point to testing ordered by state officials that found neonics in AltEn waste at levels many times higher than what is considered safe.

"Some of the levels recorded are just off the charts," said Dan Raichel, an attorney with the Natural Resources Defense Council (NRDC), which has been working with academics and other environmental protection groups to monitor the situation in Mead. "If I were living in that area with those levels of neonics going into the water and the environment I would be concerned for my own health."

Importantly, Raichel and other observers say the situation in Mead is a warning sign – an example of the need for tighter regulations of the pesticide-coated seeds that are marketed by big companies such as Bayer AG and Syngenta.

The Environmental Protection Agency (EPA) considers neonics in food and water safe at a range of up to 70 parts per billion (ppb) depending on the specific pesticide. The agency sets different benchmarks for "aquatic life" freshwater invertebrates. For the neonic known as clothianidin the benchmark is 11ppb and it is 17.5ppb for a neonic called thiamethoxam.

On the AltEn property, state environmental officials recorded levels of clothianidin at a staggering 427,000ppb in testing of one of the large hills of AltEn waste. Thiamethoxam was detected at 85,100ppb, according to testing ordered by the Nebraska department of agriculture.

In an AltEn wastewater lagoon, clothianidin was recorded at 31,000ppb and thiamethoxam at 24,000ppb. A third dangerous neonic called imidacloprid was also found in the lagoon, at 312ppb. The EPA aquatic life benchmark for imidacloprid is 0.385ppb. AltEn's lagoon system holds approximately 175m gallons.

High levels of 10 other pesticides were also found in the plant lagoon. At least four pesticides in the corn used by AltEn, including clothianidin and thiamethoxam, are known to be "detrimental to humans, birds, mammals, bees, freshwater fish" and other living creatures, state regulators noted in an October letter to AltEn.

State officials have cited the plant for "non-compliance" of various rules designed to prevent pollution, and said in the October letter that they were worried that AltEn was not properly disposing of the waste and noted the possibility of contamination of "short-term and longer-term surface water and groundwater".

"It is a really significant contamination event that is impacting the local ecosystems and community there," said Sarah Hoyle, who specializes in pesticide issues for the Xerces Society, an Oregon-based conservation organization helping research the problem in Mead.

Neither Scott Tingelhoff, AltEn general manager, nor two other plant officials responded to multiple requests for comment from the Guardian.

Last year Tingelhoff told a local television station that the company was working with state regulators to address concerns.

Mead residents say they were concerned about waste from the plant that has not stayed on plant property. In addition to the quantities taken to farms to spread across acreage, still more appears to have leached and spilled out of wastewater lagoons into adjacent waterways.

AltEn has also been applying its wastewater to acreage. Some Mead residents fear the well water their homes depend on is now contaminated, while researchers also worry about potential contamination of an underground aquifer that supplies water across the US midwest.

They also are unhappy with what they say has been more than two years of regulatory failures to protect the community.

"I've gotten a lot of pushback from people at the state," said area resident Paula Dyas, who filed a complaint with the state when her dogs became ill after ingesting some of the waste that had been dumped on a neighboring farm field. Her pets have recovered, but were so ill she feared lasting damage. "There is just no regard for how much of these chemicals we're putting on to the land and what that is ultimately going to do to animals, to wildlife," she said.

Jody Weible, former chairwoman of the Mead planning commission, tried to enlist the aid of state political leaders as well as regulators in dealing with what she refers to as the "poison" coming out of AltEn. The plant is roughly a mile from her home of 34 years.

"I've emailed the EPA, water, parks and conservation people, pretty much anybody I could think of," Weible said. "They all say there is nothing they think they can do about it."

Other neighbors living near the plant have told state officials of strange illnesses and dead or dying birds.

After fielding multiple complaints, the Nebraska department of agriculture ordered AltEn to stop distributing its waste to farm fields. But that has meant that more and more has been piling up on site at the ethanol facility or washed into its lagoons. AltEn has also started incinerating some of the waste and storing "biochar" in bags outside on plant property, a practice that further worries area residents.

Dead bees

State regulators say they have not tested water or soil or vegetation outside the plant property and have no knowledge of potential wider harm from the spread of the AltEn waste. But Judy Wu-Smart, a University of Nebraska researcher studying bee health, has done some testing and said there is little doubt that contamination from the plant has spread much farther than its boundaries.

In an academic paper she has shared with regulators and other researchers Wu-Smart said every single beehive maintained on a university research farm located about a mile from Mead has died off, losses that coincided in timing with AltEn's use of neonic-treated seed. She has also reported a scarcity of other insects common to the area, and has video recordings of birds and butterflies in the area that appear neurologically impaired.

After finding neonic residues in vegetation and tracing waterways that connect the university land to AltEn, Wu-Smart is concerned that a broad contamination event by high levels of neonics is taking a toll on the environment, and possibly the people living in the area.

"There is a red flag here. The bees are just a bio-indicator of something seriously going wrong," Wu-Smart said. There is an "urgent need to examine potential impacts on local communities and wildlife", she said.
Neonics are absorbed through the roots of plants as they grow, and can persist for years in the environment and are blamed, along with other pesticides, for a so-called "insect apocalypse". The insecticides have also been tied to serious defects in white-tailed deer, deepening concerns over the chemical's potential to harm large mammals, including people.
The European Union banned the outdoor use of neonics clothianidin, imidacloprid and thiamethoxam in 2018, and the United Nations says neonics are so hazardous that they should be "severely" restricted. But in the US, neonics are widely used.

Not just Nebraska at risk

Meghan Milbrath, assistant professor of entomology at Michigan State University, said the implications of AltEn's practices "stretch far beyond Mead".
"As we have seen here, mishandled treated seed can result in significant contamination that disrupts ecosystems and puts communities at risk," Milbrath said.
The Nebraska department of environment and energy (NDEE) said it "does not have an opinion" about the source of the bee die-offs and lacks "jurisdiction" in the matter. The state agency said it was continuing to "review operations and activities at the facility".
And though the state has not stopped AltEn from taking in pesticide-coated seeds for ethanol production, it has ordered AltEn to implement a ground water monitoring plan and other mitigation measures, though the state has noted multiple problems with compliance. The state also has ordered AltEn to dispose of its waste at a permitted solid waste disposal area facility.
Residents question whether or not that will happen and point to large piles of the green waste still ringing the facility.
State officials declined to be interviewed for this story, though Blayne Glissman, an NDEE waste permits specialist, offered a defense for the ethanol operation, saying he believed AltEn officials were just "hard-working people trying to make a living".

Comments on Proposed Changes to TSCA Fees Rule Due February 25
Lynn L. Bergeson and Carla N. Hutton, Bergeson & Campbell Blogs
http://www.tscablog.com/

On January 11, 2021, the U.S. Environmental Protection Agency (EPA) published a proposed rule that would amend the 2018 Toxic Substances Control Act (TSCA) fees rule. 86 Fed. Reg. 1890. Under TSCA, EPA collects fees from chemical manufacturers and processors to help fund implementation and to ensure that public health and the environment continue to be protected. TSCA requires EPA to review its fees every three years and, after consulting with parties potentially subject to the fees, to adjust the fees if necessary. The proposed rule describes the proposed modifications to the TSCA fees and fee categories for fiscal years 2022, 2023, and 2024 and explains the methodology by which these TSCA fees were determined. The proposed updates include:

Regarding EPA-initiated risk evaluations, narrowing the scope of the TSCA fees rule by exempting from the requirement to pay fees importers of articles containing a chemical substance, companies that produce a chemical as a byproduct or manufacture or import as an impurity, companies that manufacture or import a chemical in de minimis amounts, companies that manufacture or import chemicals solely for research and development (R&D) purposes, and companies that produce a chemical as a non-isolated intermediate;
Using cost data gathered over the past two years, instead of estimates, to update the fee calculations;
Ensuring fees are fairly and appropriately shared across companies by proposing a production-volume based fee allocation and including export-only manufacturers for EPA-initiated risk evaluations;
Allowing for corrections to be made to the list of manufacturers subject to fees for EPA-initiated risk evaluations after the final list is published, ensuring the accuracy of the list;
Increasing flexibility for companies by extending the amount of time to form consortia to share in fee payments;
Ensuring that EPA can fully collect fees and enabling companies to prepare better for paying fees by allowing payments in installments for EPA-initiated and manufacturer-requested risk evaluations (MRRE); and

Adding three new fee categories, two associated with new chemicals activities and one with test orders. Comments are due February 25, 2021. More information is available in our December 30, 2020, memorandum, "EPA Intends Proposed Rule to Increase Flexibility and Reduce Burdens under TSCA Fees Program."

New York State Bans Glyphosate/Roundup on State Land, While Advocates Push for Organic Land Management
NA, Beyond Pesticides
https://beyondpesticides.org/dailynewsblog/2021/01/new-york-state-bans-glyphosate-roundup-on-state-land-while-advocates-push-for-organic-land-management/

New York State is set to prohibit on December 31, 2021 the use of glyphosate on all state property after Governor Andrew Cuomo signed bill S6502A/A732b late last year. The state legislature passed the legislation in July, 2020. The move is an important recognition by the nation's fourth most populous state that the Environmental Protection Agency (EPA) is not adequately protecting people and the environment from hazardous pesticides (pesticide is an umbrella term that includes insecticides, herbicides, fungicides, etc). However, the law's ability to improve these protections will depend significantly upon the management approach that replaces glyphosate use.

"A transition away from Roundup and other glyphosate-based pesticides must reject the use of regrettable substitutes, and embrace sound organic principles and practices," said Jay Feldman, executive director of Beyond Pesticides. In pest and weed management, regrettable substitutions occur when one toxic chemical is banned or restricted, and another hazardous pesticide is simply used in its place. The substitution may have a different chemical formulation, mode of action, and set of health and environmental impacts, but nonetheless fills the same role as Roundup/glyphosate when it comes to weed management.

When the answer to eliminating glyphosate is to switch to another herbicide like 2,4-D, glufosinate, triclopyr, or dicamba, the message is not getting across, and more education and advocacy is needed, advocates say. A chemical-intensive approach focuses on treating symptoms – pests and weeds, but ultimately undermines a land manager's capacity to address these problems naturally. This is because synthetic pesticides (and fertilizers) harm soil life, while an organic approach to land management focuses on enhancing soil health by nurturing soil biology.

A natural, organic approach focuses on pest prevention, addressing the root causes of pest problems by promoting soil health. Healthier soil grows healthier plants, which will be more resilient in the face of pest and weed intrusions. In turfgrass, this includes an emphasis on cultural practices, such as mowing high, aeration, overseeding, and use of natural soil amendments like compost. To manage weeds and pests in natural areas, ecological assessments are conducted, and importance is placed on mechanical and biological management. Biological management approaches have the potential to adequately address a number of problematic pests and plant species. Goats have been used throughout the country to manage opportunistic weeds on natural lands and, with their hoof action, urine, and droppings, they can help restore and stabilize soil health.

As more and more states and communities consider restrictions on glyphosate use, they are considering next steps, and how these laws are implemented. While it is possible for the elimination of one chemical to prompt a change toward natural, organic practices, a more comprehensive approach can remove the guess work. Beyond Pesticides strongly encourages a comprehensive policy approach that eliminates not only glyphosate, but all hazardous pesticides registered by EPA with restrictions that only allow the limited use of organic compatible products as a last resort.

EPA's failure to act on the dangers posed by glyphosate is one example in a long string of breakdowns by the agency to safeguard public health and the wider environment. Despite strong evidence of glyphosate's carcinogenicity published by the World Health Organization, and multi-million dollar jury verdicts for those harmed by glyphosate use, the current administration not only defends glyphosate at home, but has acted on behalf of industry to flack the chemical abroad.

Critics have pointed to the controversy surrounding glyphosate as merely the visible part of a massive iceberg of regulatory failure. Beyond Pesticides is calling on President-elect Biden and Congress to clean up the corruption of science at EPA [...]

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